## BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY OF THE STATE OF MONTANA

| In the matter of the       | ) | NOTICE | OF | AMENDMENT |
|----------------------------|---|--------|----|-----------|
| amendment of ARM 24.35.121 | ) |        |    |           |
| regarding the fee for      | ) |        |    |           |
| independent contractor     | ) |        |    |           |
| exemption certificates and | ) |        |    |           |
| ARM 24.33.121 regarding    | ) |        |    |           |
| the fee for construction   | ) |        |    |           |
| contractor registration    | ) |        |    |           |

## TO: All Concerned Persons

- 1. On April 14, 2005, the Department of Labor and Industry published MAR Notice No. 24-35-193 regarding the public hearing on the proposed amendment of the above-stated rules relating to independent contractors and construction contractors at page 525 of the 2005 Montana Administrative Register, Issue No. 7.
- 2. On May 10, 2005, the Department held a public hearing in Helena regarding the above-stated rules at which oral and written comments were received. Additional written comments were received prior to the closing date of May 17, 2005.
- 3. The Department has thoroughly considered the comments and testimony received. The following is a summary of the comments received and the Department's response to those comments:
- Comment 1: An independent building construction contractor commented in support of the proposed rule changes saying that as one who works as an independent contractor and one who employs independent contractors, he supports a meaningful exemption from workers' compensation coverage. He stated he believes the proposed fee for an independent contractor exemption certificate is reasonable and that the benefit of a conclusive certificate fully justifies the fee.
- <u>Response 1</u>: The Department acknowledges the comments in support of the fee change and notes that the fee may be changed again in the future after the Department gathers more information on the costs of administering the program.
- <u>Comment 2</u>: A representative of the American Insurance Association commented in support of the amendments. The Association also recommended that the Department affirmatively advise or notice present independent contractor certificate holders and their hiring agents of the changes resulting from the passage of Chap. 448, L. of 2005. The Association also suggested that present certificate holders apply for a new exemption certificate.

Response 2: The Department has sent a mailing to the last known address of all exemption certificate holders advising them of the passage of and requirements contained in Chap. 448, L. of 2005. Also, in cooperation with the largest insurer in the state, a notice to hiring agents has been drafted and is being distributed explaining the requirements contained in Chap. 448, L. of 2005. The Department agrees with the suggestion that persons with an "old" (pre-April 28, 2005) exemption apply for the "new" version pursuant to Chap. 448, L. of 2005.

<u>Comment 3</u>: The Montana State Fund commented in support of the amendments as proposed, stating that as a result of its participation in the study committee, which in turn recommended the new legislation, it agrees the proposed fee is necessary to appropriately administer Chap. 448, L. of 2005.

<u>Response 3</u>: The Department acknowledges the comments of the Montana State Fund.

Comment 4: At the public hearing, representatives of the Montana Self Insurers Association, the Montana Municipal Insurance Authority, the Montana Building Industry Association, and the United Brotherhood of Carpenters, all testified in favor of the proposed fee increase for the independent contractor exemption certificate because each supports the new program to establish a conclusive presumption of independent contractor status. Also at the public hearing, representatives of the National Federation of Independent Businesses, the Montana Chamber of Commerce, and the Montana Motor Carriers Association checked the box indicating support for the proposed rule changes on public hearing registration forms distributed by the Department.

<u>Response 4</u>: The Department acknowledges the comments of the various organizations that commented on the proposed amendments.

- 4. After consideration of the comments, the Department has amended the rules exactly as proposed.
- 5. As indicated in the proposal notice, the Department will apply the amendments to ARM 24.35.121 retroactively to the effective date of Chap. 448, L. of 2005. Therefore, although the amendments are effective as of June 17, 2005, the amendments apply to independent contractor exemption applications made on or after April 28, 2005.

<u>/s/ MARK CADWALLADER</u>
Mark Cadwallader,
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State June 6, 2005